

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application)	Examiner: Paula L. Craig
Michael T. Morman et al.)	
)	Art Unit: 3761
Serial No.: 10/730,364)	
)	Deposit Account: 04-1403
Filed: December 8, 2003)	
)	Customer No.: 22827
Confirmation No.: 2821)	

Title: ABSORBENT ARTICLE WITH ELASTOMERIC BORDERED EXTENSIBLE
MATERIAL BODYSIDE LINER AND METHOD OF MAKING

APPELLANT'S REPLY BRIEF on APPEAL

Mail Stop Appeal Brief – Patents
Commissioner for Patents
P.O. box 1450
Alexandria, VA 22313-1450

Sir:

Appellant hereby submits its reply appeal brief to the January 26, 2009,

Examiner's Answer in accordance with 37 CFR § 41.41 for the subject application.

7. APPELLANT'S REPLY to EXAMINER'S RESPONSE to ARGUMENT:

As to each of appellant's independent claims 1 and 25, the Office must show that the differences between each of these claims and the prior art are such that the subject matter of each claim as a whole would have been obvious at the time of the invention to the person of ordinary skill in the art of the invention. The flawed assumption of the Final Office Action and the Examiner's Answer is their reliance on Serbiak et al as a smorgasbord from which the Office is free to pick and choose excerpted disclosures from different embodiments disclosed in Serbiak et al and cobble the excerpts together to form a theoretical embodiment to be compared to what is described in each of appellant's claims 1 and 25.

For example, each of appellant's claims 1 and 25 requires (emphasis added):

a **non-extensible** absorbent body structure
sandwiched between said outer cover member and said
body side liner;

Lines 4-6 on page 3 of the May 2008 Final Office Action contends that (emphasis added):

Serbiak teaches a non-extensible absorbent body
structure **36** sandwiched between the outer cover member
and the body side liner (**Figs. 1-9, col. 7, line 39 to col. 8,**
line 26, col. 10, lines 12-15, Claim 3).

In lines 1-3 of the Response to Arguments section of the Examiner's Answer on page 14 thereof it is contended (emphasis added):

Applicant argues that the absorbent core 36 of
Serbiak is not itself non-extensible. However, Serbiak
expressly teaches that the absorbent core is non-extensible

(col. 2, lines 7-10, Claims 3 and 48).

The problem with all of these Serbiak excerpts, namely, Figs. 1-9, column 7, line 39 to column 8, line 26; column 10, lines 12-15, column 2, lines 7-10, claims 3 and 48, is that these references are not to any single coherent embodiment disclosed in Serbiak et al. Rather, they are references to different embodiments of Serbiak et al. The reliance on Figs. 1-9 for example implicates seven different embodiments of Serbiak et al. This fact is readily apparent from the brief description of the drawings in column 5 of Serbiak et al., which identifies a first embodiment illustrated in Figs. 1 and 2, a second embodiment in Figs. 3 and 4, a third embodiment in Fig. 5, a fourth embodiment in Fig. 6, a fifth embodiment in Fig. 7, a sixth embodiment in Fig. 8 and a seventh embodiment in Fig. 9.

The Office has yet to identify which of the seven embodiments is being compared to either appellant's claim 1 or appellant's claim 25, and upon doing so, to which of the differences between the selected embodiment of Serbiak et al. and each of appellant's claims 1 and 25 are the contentions of the Office directed to show that the subject matter of the respective claim 1 and/or 25 **as a whole** would nonetheless have been obvious at the time of appellant's application to a person of ordinary skill. For example, neither appellant's claim 1 nor claim 25 reads on either Serbiak et al. claim 3 or Serbiak et al. claim 48.

Appellant's argument assumed that Serbiak et al.'s **first embodiment** shown in Figs. 1 and 2 of Serbiak et al. was the basis of the Office's Section 103 argument, because that Fig. 1 and 2 embodiment is what is described in Serbiak et al. **column 7, line 39 to column 8, line 26**, which was cited by the Office. Accordingly, appellant

identified the deficiency by referring to Serbiak et al **column 8, lines 17-20** to show that in this **first embodiment**, absorbent core 36 is not itself non-extensible. The description at **column 10, lines 12-15** does not refer to the first embodiment of Figs. 1 and 2, but rather to the embodiment of Fig. 6, which is a **fourth embodiment** of the Serbiak et al disclosure according to Serbiak et al column 5.

The arguments of the Final Office Action and the Examiner's Answer are replete with importing excerpts describing one Serbiak et al embodiment into a wholly new combination composed of excerpts imported from two or three other Serbiak et al embodiments. For example, lines 12-13 on page 15 of the Examiner's Answer cites column 8, lines 8-48, column 9, line 24 to column 10, line 58, claims 12, 18, 23, 31, and 48 of Serbiak et al. Column 8, lines 8-48 refer to a **first embodiment** of Figs. 1 and 2, a **seventh embodiment** of Fig. 9, a **second embodiment** of Fig. 3, and a **third embodiment** of Fig. 5. Serbiak et al column 9, line 24 to column 10, line 58 refers to a **first embodiment** of Fig. 1, a **second embodiment** of Fig. 3, a **sixth embodiment** of Fig. 8, and a **seventh embodiment** of Fig. 9. Nor has the Office set forth how what is described in any one of Serbiak et al claims 12, 18, 23, 31, and 48 renders obvious either appellant's claim 1 or claim 25 as a whole.

As to claim 7, the argument of the Office apparently rests on the assumption that no more than four non-parallel strands of material would be interpreted by the person of ordinary skill to be a web within the meaning of that term in appellant's specification. However, nowhere in appellant's specification is such a structure deemed to be a web, and thus the Office offers no support for its interpretation of this term, which interpretation is clearly erroneous as a matter of both fact and law.

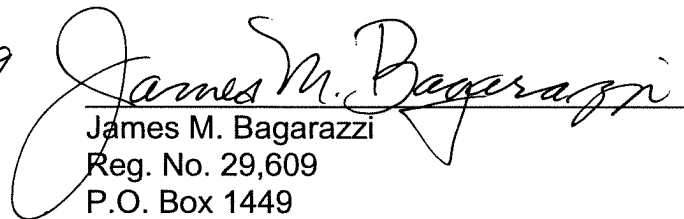
Conclusion

Claims 1-9, 13, 14, 16-19 and 25 are in condition for allowance and should be passed to issue.

Respectfully submitted,

DORITY & MANNING, P.A.

DATED: 18 March 2009


James M. Bagarazzi
Reg. No. 29,609
P.O. Box 1449
Greenville, S C 29602-1449
(864) 271-1592